

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

HARBOUR HOMES, LLC, a Washington limited liability company,

No.

**Plaintiff,**

V.

**NEVADA CAPITAL INSURANCE  
COMPANY, a Nevada insurance company,**

**NOTICE OF REMOVAL OF  
CIVIL ACTION UNDER  
28 U.S.C. §1441(a)**

Defendant.

TO: The Clerk of the Court;

AND TO: Plaintiff, and their counsel of record, Tristan Swanson.

Please take notice that Defendant Nevada Capital Insurance Company (hereinafter "Nevada Capital") hereby removes to this Court the state court action described below:

## I. THE SUBJECT ACTION

1. On March 4, 2019, Plaintiff, Harbour Homes, LLC, filed an action in the Superior Court of the State of Washington in and for the County of King, which was assigned Cause No. 19-2-06024-7 SEA. On March 6, 2019, Harbour Homes served Karen Bakios with a true and correct copy of the Summons attached as **Exhibit A** to this Notice of Removal as well as the Complaint. A copy of the Complaint is attached as **Exhibit B**.

## II. DIVERSITY OF CITIZENSHIP

2. In the Complaint, Harbour Homes alleges they are a Washington Limited Liability Company doing business in King County, Washington.

3. Nevada Capital is an insurance company organized under the laws of the state of Nevada and with its primary place of business in Reno, Nevada.

### **III. AMOUNT IN CONTROVERSY**

4. On July 3, 2018, Mario Perez Martinez and Maria Ceniceros filed suit against Harbour Homes in King County Superior Court alleging injuries sustained by Mr. Martinez while working as an employee for Delcon Construction, LLC where Harbour Homes was the general contractor and Delcon Construction a subcontractor.

5. Harbour Homes tendered a claim to Nevada Capital as an additional insured under a policy issued by Nevada Capital to Delcon Construction. Nevada Capital agreed to defend Harbour Homes subject to a reservation of rights.

6. It is Nevada Capital's understanding that Mr. Martinez's claims may exceed the one million dollar-per occurrence limit stated in the policy.

7. Harbour Homes' Complaint alleges that Nevada Capital breached a policy of insurance by failing to pay defense costs incurred by Harbour Homes in defending against claims asserted by Mr. Martinez. **Exhibit B ¶¶ 17-19.**

8. In addition to the breach of contract claims, Harbour Homes asserts claims for damages under common law bad faith and Washington's Consumer Protection Act. **Exhibit B**, ¶¶ 20-25, 30-31. Harbour Homes is further seeking their attorney fees incurred in this action under *Olympic Steamship*.

Act. **Exhibit B**, ¶¶ 28-29.

10. The amount in controversy requirement may be satisfied by claims of general and unspecified damages, claims for attorney's fees authorized by law, and by punitive damages. *See, e.g., Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 946 (9th Cir. 2001); *Galt v. Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998).

11. Based on the foregoing, the amount in controversy in this matter is in excess of the \$75,000 jurisdictional limitation.

## **IV. JURISDICTION**

12. For purposes of determining jurisdiction under 28 U.S.C. § 1332, Nevada Capital  
is a citizen of Nevada. Harbour Homes is a citizen of Washington. As such, diversity is  
complete.

13. The amount in controversy exceeds \$75,000, excluding interest and costs.

14. This Court, therefore, has jurisdiction over this controversy under 28 U.S.C. § 1332 and 28 U.S.C. § 1441.

## V. TIMELINESS

15. Nevada Capital was notified of this lawsuit on March 6, 2019. This action was filed on March 4, 2019. This Notice of Removal, filed on March 25, 2019, is timely under 28 U.S.C. § 1446.

## **VI. COPIES OF PROCESS, PLEADINGS, ORDERS, AND MOTIONS IN STATE COURT PROCEEDINGS**

16. In accordance with 28 U.S.C. § 1446, attached to Notice of Removal as **Exhibit A** through **Exhibit E** are true and correct copies of all process, pleadings, and orders filed in the

1 action before the Superior Court of King County in the State of Washington. These documents  
2 are:

- 3 A. Summons;
- 4 B. Complaint;
- 5 C. Civil Case Assignment Notice
- 6 D. Order Setting Case Schedule
- 7 E. Affidavit of Service by Insurance Commissioner
- 8 F. Notice of Appearance of Defendant

9 17. Notice of this removal will be filed with the Clerk of the King County Superior  
10 Court and will be given to all other parties, in accordance with 28 U.S.C. § 1446.

11 DATED this 25th day of March, 2019.

12 LETHER & ASSOCIATES, PLLC

13  
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s/ Eric J. Neal  
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2                   **CERTIFICATE OF SERVICE**  
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4                   The undersigned hereby certifies under the penalty of perjury under the laws of the State  
5 of Washington that on this date I caused to be served in the manner noted below a true and  
correct copy of the foregoing on the parties mentioned below as indicated:

6                   Tristan Swanson, WSBA No. 41934  
7                   701 5th Ave. Ste. 4400  
8                   Seattle, WA 98104  
9                   tswanson@ashbaughbeal.com  
10                  *Attorneys for Plaintiff*

11                 By:        First Class Mail                    E-mail/ECF                    Legal Messenger

12                 Dated this 25th day of March, 2019 at Seattle, Washington.

13                 /s Lina Wiese  
14                 Lina Wiese | Paralegal  
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